



CITY OF HOUSTON EQUAL RIGHTS ORDINANCE NEW CHAPTER 17

City Council - Quality of Life Committee

Presented by

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April 30, 2014



Why Houston? Why now?

Houston is the only major metropolitan area in the country that does not prohibit discrimination in places of public accommodation. Additionally, there is no protection against discrimination in employment on the basis of sexual orientation or gender identity. Houston believes that all persons living in or visiting the city are entitled to be treated with equal dignity, respect and status, and have the right to be free from discriminatory and unequal treatment.

A History of Federal Equal Rights Laws

- Civil Rights Act of 1866
- Equal Pay Act of 1963
- Civil Rights Act of 1964
- Age Discrimination in Employment Act of 1967
- Fair Housing Act of 1968
- Equal Employment Opportunity Act of 1972
- Sec. 504 of Rehab. Act of 1973
- Pregnancy Discrimination Act of 1978
- ADEA of 1986
- Fair Housing Amend. of 1988
- Americans with Disabilities Act of 1990
- Civil Rights Act of 1991
- ADA Amendments Act of 2008
- Genetic Information Non-Discrimination Act of 2008
- Lily Ledbetter Fair Pay Act of 2009

HISTORY OF HOUSTON'S NON-DISCRIMINATION ORDINANCES AND POLICIES

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| Chapter 15 ½ of the Code of Ordinances – <i>Housing</i> | Feb. 12, 1975 | Prohibits discrimination in housing based on an individual's race, color, sex, religion or national origin. Derived from Ord. No. 75-166. |
| Chapter 2-292 of the Code of Ordinances – <i>Contract Compliance Program</i> | Aug. 9, 1978 | Requires all contracts entered into by the City to incorporate an equal employment opportunity clause. Prohibits discrimination based on race, religion, color, sex, national origin, or age. Derived from Ord. No. 78-1538. |
| Mayor's Policy 102.00 – <i>Affirmative Action/Equal Opportunity</i> | Feb. 7, 1983 | Provides equal employment and economic opportunity at every level of municipal government, in all City programs and in all related activity without regard to race, color, religion, sex, national origin, age, or handicap, or due to one's status as a qualified Vietnam Era veteran or otherwise disabled veteran. It is further policy to provide each employee a work environment free of discrimination and sexual harassment. |
| Mayor's Policy 114.00 - <i>Prohibition of Discrimination in Employment (Disability)</i> | Dec. 31, 1991 | Prohibits City employees from discriminating against others on the basis of the person's disability. |
| Executive Order 1-20 – <i>Racial, Ethnic, Gender Slurs</i> | Oct. 23, 1992 | Prohibits City employees from verbally, non-verbally or illustratively utilizing racial, ethnic, or gender slurs or connotations towards other City employees. |
| Executive Order 1-8 – <i>Prohibition of Discrimination Based on Sexual Orientation</i> | Feb. 16, 1998 | Prohibits the City and its employees from discrimination against other City employees and citizens on the basis of sexual orientation. |
| Chapter 2 of the Code of Ordinances – <i>Non-Discrimination in City employment/services/contracting</i> | Jul. 25, 2001 | Prohibits the City and its employees from discriminating in city employment, city services and in the awarding of contracts based on a person's race, color, national origin, marital status, religion, age, gender, sexual orientation, gender identity, disability, military service. |

HISTORY OF HOUSTON'S NON-DISCRIMINATION ORDINANCES AND POLICIES (CONTINUED)

| | | |
|--|---------------|--|
| Chapter 17 of the Code of Ordinances – <i>Fair Housing</i> | Apr. 26, 2006 | Amends Chapter 17 in its entirety to include language formerly derived from Chapter 15 ½; further amends the language to comply with the 1988 amendments to the federal Fair Housing Act; prohibits discrimination in housing based on race, color, religion, sex, national origin, familial status, or disability. |
| Executive Order 1-8 (revised) – <i>Prohibition of Discrimination Based on Sexual Orientation and Gender Identity</i> | Mar. 25, 2010 | Similar to the Feb. 16, 1998 version, except adds gender identity. |
| Executive Order 1-20 (revised) – <i>Racial, Ethnic, Gender and Other Slurs</i> | Mar. 25, 2010 | Further defines inappropriate or offensive conduct. |
| Executive Order 1-50 – <i>Prohibited Workplace Conduct, Including Sexual Harassment</i> | Apr. 2, 2010 | Prohibit City employees from engaging in sexual harassment and other types of prohibited conduct and to establish procedures for investigating and remedying claims. |
| Executive Order 1-50 (revised) – <i>Workplace Discrimination and Harassment</i> | Apr. 6, 2012 | Prohibit employees from discriminating against or harassing individuals based on their sex, race, color, ethnicity, national origin, age, religion, disability, sexual orientation, genetic information, gender identity, pregnancy, or any other legally protected characteristic. Superseded E.O. 1-8, E.O. 1-20, E.O. 1-50, Mayor's Policy No. 102.00, and Mayor's Policy No. 114.00. |

What the ERO Does, Generally

- Incorporates the existing Chapter 2, City employment and City services, and E.O. 1-50
- Expands on Chapter 15 to adopt process for addressing discrimination in employment on city contracts and subcontracts
- Prohibits discrimination in places of public accommodation
- Prohibits discrimination in private employment for employers with 50 or more employees
- Incorporates existing fair housing provisions under Chapter 17.

MUNICIPALITY ORDINANCE COMPARISON MATRIX

| CITY | AREAS OF PROTECTION | INVESTIGATING BODY/PROCESS FOR ENFORCEMENT |
|-------------|---|---|
| Austin | Employment (City/Private) City Contracts Public Accommodations Housing | <ul style="list-style-type: none"> • 9 member commission, appointed by city council; advisory. • Complaint filed with and investigated by Equal Employment/Fair Housing Office (EE/FHO). • Commission handles appeals of “no reasonable cause determinations” by EE/FHO in public hearing – can affirm, reverse or modify EE/FHO determination (for public accom. and employment); holds public meetings on complaints against city contractors where conciliation fails - forward findings to city council. • EE/FHO can refer cases to city attorney for prosecution where conciliation fails. • Subpoena power (housing). • Majority of complaints resolved during conciliation. • Average complaints per year: Employment – 135; Public Accommodation – 0 to 3; Housing – 100. |
| Dallas | Employment (City only; private – sex. orient. only) City Contracts Public Accommodations Housing | <ul style="list-style-type: none"> • City attorney’s office investigates complaints. • Subpoena power through city council. • Majority of the complaints filed under fair housing. • Violations of ordinance are subject to criminal complaint in municipal court. |
| El Paso | Employment (City only) Public Accommodations Housing | <ul style="list-style-type: none"> • 11 member commission, recommended by mayor and appointed by city council. • Commission receives and investigates complaints alleging discrimination in public accommodation. • Commission attempts to resolve by conciliation; if conciliation fails, forward findings to city council. • No subpoena power. • Violations of the ordinance are subject to criminal complaint in municipal court. |
| Fort Worth | Employment (City/Private) Public Accommodations Housing | <ul style="list-style-type: none"> • 11 member commission, approved by city council on an at-large basis. • Complaint filed with and investigated by commission. • Commission may request municipal prosecution. • Commission may refer to city attorney for enforcement of conciliation agreement (housing). |
| San Antonio | Employment (City only) City Contracts Public Accommodations Housing | <ul style="list-style-type: none"> • Complaints received in and investigations conducted by city attorney’s office. • Violations of the ordinance are subject to criminal complaint in municipal court. • Majority of complaints filed under fair housing. |

EQUAL RIGHTS ORDINANCE SUMMARY

CHAPTER 17

ARTICLE I- General

- *Familial status, genetic information and pregnancy added to protected characteristics, which already include, in various portions of the Code, race, color, national origin, marital status, religion, age, gender, sexual orientation and gender identity, disability and military service.*
- *Adds subcontractor to the definition of contractor.*
- *Adds and revises definitions for a number of new terms, including but not limited to employee, employer, familial status, genetic information, military status, person, place of public accommodation, etc.*

ARTICLE II – City Employment and City Services

Prohibition against discrimination in city employment (supplemented)

- *Supplements definition of discriminate for purposes of employment practices, to match E.O. 1-50.*
- *Adds process for enforcement currently memorialized in E.O. 1-50.*
- *Adds prohibition against retaliation currently memorialized in E.O. 1-50.*

EQUAL RIGHTS ORDINANCE SUMMARY (CONTINUED)

ARTICLE III – Contracting

Prohibits discrimination in the performance of a city contract (**NEW**)

- *Prohibits contractors (including subcontractors) from discriminating against individuals based on protected characteristics in the performance of any City contract.*
- *Permits the use of remedies provided by contract if the contractor is found to be in violation of this article.*
- *Prohibits contractors from retaliating against persons who have filed a complaint.*
- *Authorizes OIG to investigate the complaint and seek assistance from the City Attorney in the event a party fails to cooperate with the investigation.*
- *Authorizes the Inspector General to engage in conciliation.*
- *If conciliation fails, matter is referred to City Attorney for appropriate action consistent with Chapter 15.*

EQUAL RIGHTS ORDINANCE SUMMARY (CONTINUED)

ARTICLE IV – Public Accommodation **(NEW)**

Prohibition against discrimination in public accommodation

- *Prohibits places of public accommodation from discriminating against persons based on protected characteristics.*
- *Provides a good faith defense for complaints arising from the denial of use of a gender specific facility.*
- *Does not require the construction of new bathrooms, shower rooms, etc.*

Investigation of alleged violations; procedures

- *Authorizes OIG to investigate complaints under this article.*
- *Permits City Attorney to request City Council to issue a subpoena for purposes of obtaining cooperation with the investigation.*
- *Contains confidentiality provisions, as permitted by law.*

EQUAL RIGHTS ORDINANCE SUMMARY (CONTINUED)

ARTICLE IV – Public Accommodation **(NEW)** (cont.)

Investigation of alleged violations; procedures (cont.)

- *Authorizes the Inspector General to engage in conciliation.*
- *Permits City Attorney to file a complaint in municipal court for violation of this article if conciliation fails.*

Effect of provision

- *No finding, conciliation, or adjudication under this article shall be admissible in connection with any City licensing, permitting or regulatory matters.*

Exemptions

- *Exempts certain businesses operated by a bona fide private club.*
- *Exempts bona fide social, fraternal, educational, civic, religious organizations, private kindergartens, day care centers, nursery schools.*

Criminal penalties for violation

- *Municipal court fine of \$250 to \$500; aggregate total not to exceed \$5000.*

EQUAL RIGHTS ORDINANCE SUMMARY (CONTINUED)

ARTICLE V – Private Employment (NEW)

Prohibition against discrimination in employment

- *Prohibits employers with 50 or more employees from discriminating against their employees based on protected characteristic.*
- *Government agencies, 501(c) organizations, and religious organizations are not employers for purposes of this article.*
- *Prohibits employers from retaliating against employees who file complaints in good faith pursuant to this article.*
- *Permits an employer to assert applicable affirmative defenses drawn from federal or state law.*

Investigation of alleged violations; procedures

- *Complaints within the jurisdiction of a federal or state agency shall be referred to those agencies for further action.*
- *Authorizes OIG to investigate all other complaints under this article.*
- *Permits City Attorney to request City Council to issue a subpoena to obtain cooperation in connection with the investigation.*

EQUAL RIGHTS ORDINANCE SUMMARY (CONTINUED)

ARTICLE V – Private Employment **(NEW)**(cont.)

Investigation of alleged violations; procedures (cont.)

- *Authorizes the Inspector General to engage in conciliation.*
- *Permits City Attorney to file a complaint in municipal court for violation of this article if conciliation fails.*

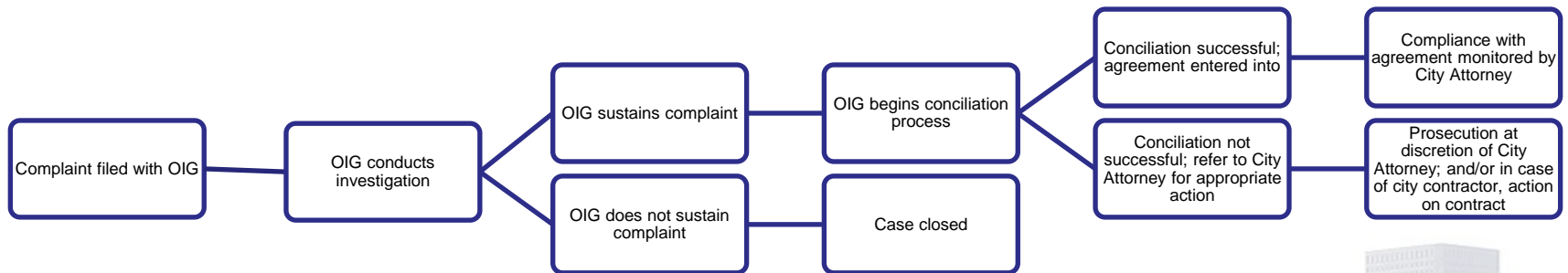
Effect of provisions

- *No finding, conciliation, or adjudication under this article shall be admissible in connection with any City licensing, permitting or regulatory matters.*

Criminal penalties for violation

- *Municipal court fine of \$250 to \$500; aggregate total not to exceed \$5000.*

Equal Rights Ordinance Complaint Process



Investigation process for complaints filed pursuant to the articles addressing employment under city contracts, places of public accommodation, and private employment.

EQUAL RIGHTS ORDINANCE SUMMARY (CONTINUED)

ARTICLE VI – Fair Housing (supplemented)

- *Office of the Inspector General may investigate complaints pursuant to this article, in addition to the fair housing administrator.*
- *Removes sections beyond City's authority (authorizing filing suit in state court by city or private persons).*

FREQUENTLY ASKED QUESTIONS

- Confidentiality
- Use of subpoenas
- Impact on licenses and permits
- Notification to subcontractors
- Criminal v. civil penalties
- Impact on budget
- Does not apply to a contractor's relationship with its employees not working on City contracts unless the contractor meets the definition of an *employer* for purpose of Article V – Private Employment.
- Place of public accommodation is a business with a physical location.
- Definition of place of public accommodation is dependent on the activities that occur in the physical space (i.e. open to the general public and offers for compensation any product, service or facility).

CONCLUSION

QUESTIONS